

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION JOINT APPROPRIATIONS SUBCOMMITTEE ON LONG RANGE PLANNING**

**Call to Order:** By **CHAIRMAN MATT MCCANN**, on February 2, 2001 at 8:00 A.M., in Room 350 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Matt McCann, Chairman (D)  
Rep. Dave Kasten (R)  
Sen. Jon Tester (D)  
Rep. Steve Vick (R)

**Members Excused:** Sen. Bob Keenan, Vice Chairman (R)  
Sen. Tom A. Beck (R)

**Members Absent:** None.

**Staff Present:** Jane Hamman, OBPP  
Andrea Hyatt, Committee Secretary  
Brian McCullough, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 5, 1/30/2001; HB 14,  
1/30/2001

Executive Action:

**CHAIRMAN MCCANN** opened the hearing on HB5 and HB 14.

The committee was presented with Volume 2, Governor's Budget, State of Montana, Fiscal Years 2002-2003 **EXHIBIT(jlh27a01)**; binder entitled "Project Status Report, Long Range Building Program As of FYE 00" **EXHIBIT(jlh27a02)**; and a copy of the power point presentation entitled "Long Range Building Program Presentation, Architecture & Engineering Division, 2002-03 Biennium **EXHIBIT(jlh27a03)** .

**{Tape : 1; Side : A; Approx. Time Counter : 35 - 516}**

**Maenan Ellingsen, Dorsey & Whitney, the State's Bond Council,** provided a copy of the Moody's Investors Service latest rating on the State of Montana; we are rated in the second highest category of states. **EXHIBIT(jlh27a04)** She explained what the rating is based upon and discussed points the committee needs to concentrate on in regards to what constitutes debt; the process to incur debt and the role of the Bond Council in advising the State. She also provided the committee with a booklet entitled "General Obligation Bond Financing Presentation-USbancorp-Piper Jaffray" **EXHIBIT(jlh27a05)** and their Board of Investments Fiscal Year 2000 Annual Report **EXHIBIT(jlh27a06)**.

Debt is a commitment or an obligation for the State of Montana to make a payment in a future fiscal year period. It is an obligation that extends beyond this biennium. The Constitution requires us to operate on a cash basis, not borrow or do deficit financing. Normally, a legislative body cannot bind future legislative bodies to do a certain thing. But when you incur a debt, you are obligating future legislatures to honor that commitment. There are special procedures for incurring debt; the Constitution requires that no debt shall be incurred without a two-thirds vote of each house of the legislature. It is also required that a third party independent opinion be given that this debt has been validly authorized and incurred. This is why Bond Council gets involved in rendering opinions about State debt.

There are commonly two kinds of debt: General Obligation Debt and Revenue Debt. General Obligation Debt is when the full faith credit and taxing power of the State is pledged to that debt. Most of the debt authorized by this committee, particularly with respect to the long range program bonds and the renewable resource program, is general obligation bonds. It provides the best interest rate because it is the strongest kind of debt a governmental entity can issue. This means we promise that when we issue those bonds that we will levy whatever taxes or cut whatever expenditures we have in order to honor that debt. It is the highest kind of debt in terms of credit worthiness that we can issue.

The State also issues other kinds of debt, and mostly that is in the nature of Revenue Debt. An example would be the Coal Severance Tax Debt. When a Coal Severance Tax Bond is issued, even though we have used our taxing powers as a State to enact the Coal Severance Tax, what is being pledged when issuing a Coal Severance Tax Bond is just the stream of revenue that comes in from that Coal Severance Tax. There is no promise to the bondholders that if the coal production goes down, we will raise the rate of taxes, we do not make a promise as to how much coal

will be mined, we cannot control the credit worthiness of that stream of revenue. It is not a general promise to pay, it is our promise to pay whatever our coal severance tax revenues are that we receive.

The committee had questions and **Ms. Ellingsen** responded. **SEN. TESTER** questioned about buying a bond that still has the authority to issue \$49 million more of these bonds. **Ms. Ellingsen** explained that they inform buyers there is the authority to issue more and that it would be his (the bondholder) risk in buying that bond. **SEN. TESTER** questioned if they issue the revenue bond and then the legislature got the two-thirds vote to spend that revenue out of the coal trust, what happens to those bonds. **Ms. Ellingsen** stated that it is not allowed. There is a United States Constitutional provision stating that a "State cannot impair contracts". She stated that often a bill is introduced to use the Coal Severance Tax in a different way; she has to remind the legislature that you made a promise to all the bond holders that you were going to deposit in to the trust fund this stream of revenue". Downstream from that, you can constitutionally take it out, we did not promise them the entire coal tax money; all that the bondholders have the lien on is the flow of revenue that comes in each year. So we only have to deposit our revenues each year, pay our bonds and then the legislature, subject to the other constitutional provisions, is free to appropriate the funds or whatever. They (the bondholders) have been granted the "first lien" on those annual revenues, not on the fund. There is a tax reason: if we pledged the full coal tax trust fund for the payment of the bonds, under the internal revenue service, it is called a replacement fund, and they would have a yield restrict the investments to no more than the rate we are paying on the bonds; which is not good for the bond council. The bondholders have no security in the fund, but only the annual flow.

That is why over the years they have been able to create things like the Treasure State Endowment because it is down stream after it gets deposited. The first deposit is in to the bond fund, within the trust fund bond account and the bonds get paid. Actually they do not use much of the coal severance trust fund to pay off the coal severance tax bonds because the first thing they use is the loan repayments that they receive from the local governments. So not much of the coal tax revenues go to the payment of those bonds at this time. The reason they issue coal tax bonds is to make loans for water projects and they get repaid and that is their first pledge of revenues.

**SEN. TESTER** questioned if there is any way the coal trust fund can be leveraged so the corpus is intact but have money available

for low interest loans for power plants. **Ms. Ellingsen** stated, for example: the current coal severance tax bond program and the committee could legislatively expand the purpose for which they issue coal severance tax bonds. **SEN. TESTER** then questioned where the flow comes from to pay those bonds. **Ms. Ellingsen** stated it would be the coal tax revenues coming in, and depending on what they did with the proceeds of that bond and loan repayments. **REP. VICK** questioned if we had \$49 million more or is that the total. **Ms. Ellingsen** stated "more". Under our coverage requirements they have \$49 million capacity based on what our anticipated revenues in our last actual five years of coal severance tax revenues would support based on our bond coverage calculation with our outstanding bondholders. The current bondholders were informed that we will not issue any bonds unless the revenues coming will provide two times coverage of our debt service.

In reference to using tax dollars for power, she was approached earlier by a committee wondering how to use the State's bond capacity with respect to electrical energy. First, we need to keep in mind the main constitutional provision that states "taxes shall be levied for public purpose". You need to disavow the notion that we can use tax dollars to give subsidies to big companies. To the extent we are going to use tax dollars to do power, for the most part, if it is direct tax dollars, it has to be through a publicly owned, monitored program.

With respect to issuing bonds for projects, the State has issued coal severance tax bonds for power generation; the Toston Dam, a contract with Montana Power, where they take the power generated from that, and they are paid off by the revenues received under that contract and the credit backup is the coal severance tax bonds. We can authorize the issuance of two kinds of bonds; bonds that would just be an obligation of the power company and they can issue additional bonds where we can put the State's credit, the coal tax trust revenues behind that.

Whenever we use the State's bonding capacity, whether coal severance tax or general obligation bond authority, we effect our credit rating and our ability to issue bonds for other things. It is her view, and it seems to be the trend across the country in regards to producing power, it does not seem too much of a need for a state to use their taxing power or taxes to provide capital to construct power plants. There are six power plants under construction in Oregon and about seven in Washington, and there are plenty of investors who are willing to invest in power plants. Power plants are revenue generating facilities and that they probably would not want to use our general obligation bond authority to fund something that is a revenue. She just wanted

to point out that we shouldn't stretch our credit and taxing power, and should not finance projects that we could finance on a revenue basis. It should go for things that cannot be financed on a revenue basis, such as schools.

**REP. VICK** asked if she could explain the one bill that would require a two-thirds vote, he believes it is the one for the Department of Justice.

*{Tape : 1; Side : B; Approx. Time Counter : 0}*

**Ms. Ellingsen** stated it needs to be passed by a two-thirds vote. This bill looks to her as though the committee is authorizing a department to incur debt. There has been a trend for some governments to camouflage debt by stating it is not really debt, it is a lease. Since the Bond Council and Department of Administration are obligated every time they put out an official statement to encourage the buying of their bonds, they have a duty to disclose to them every fact that is material as to whether they should buy the bond or not. They will identify all the leases that have non-appropriation clauses in them, they are not debt because they did not get the two-thirds vote; they are not appropriation, they tell whoever is holding the paper on that lease and that we could walk away from this. They also know they would not walk away from it because they have an essential government function going on in that building. But they are required to disclose the nature of these obligations.

**REP. KASTEN** questioned if there was other obligations on the corpus. **Ms. Ellingsen** stated none. Discussion followed in reference to the booklet handed out (**EXHIBIT 5**). **Ms. Ellingsen, Jane Hamman and D. J. Whitaker** provided further background information and responded to questions.

*{Tape : 1; Side : B; Approx. Time Counter : 397-515}*

**Tom O'Connell, Architecture & Engineering (A&E)**, gave a power point presentation on the Long Range Building Program and the funding. He discussed the revenue estimates, program size, current funding and current projects. (**Refer to EXHIBIT 3**) He introduced **Jim Whaley** who would explain the projects in Volume 2 and **Kathy Willis** who would provide a review of the projects status reports found in **EXHIBIT 2**.

*{Tape : 2; Side : A; Approx. Time Counter : 0 - 517}*

**TOM O'CONNELL CONTINUED HIS PRESENTATION**

**SEN. TESTER** questioned if the University System could assess fees to students to build buildings. **Tom O'Connell** responded that it is for only certain facilities, but typically they have used their fees to build only dormitories, student unions and those types of structures. The Renne Library was built through assessed fees to students and without legislative consent. Some of the buildings had private donations as part of the funding package to get them built. Also, before adding a student fee, it will go to the students for a vote to assess themselves. Discussion followed. He discussed the various authorities needed for different projects within the University system; the history of the review plan before coming to the committee and the funding process. He discussed their department budget. (**EXHIBIT 3, PG. 5**)

*{Tape : 2; Side : B; Approx. Time Counter : 0-274}*

**TOM O'CONNELL CONTINUED HIS PRESENTATION**

**Tom O'Connell** continued his discussion of their budget. **CHAIRMAN MCCANN** questioned the bond debt service. **Mr. O'Connell** directed them to page A-6 of the Project Status Report book (**EXHIBIT 2**) under the 54<sup>th</sup> Legislative Session section and that most of the coal severance tax revenue is being used to service debt. **REP. VICK** questioned how that money is used to service debt. **Maenan Ellingsen** explained that the other 50% of the coal severance tax fund revenues, and is appropriated by the legislature for various purposes. So, in projecting out general fund revenues for the years to cover that debt service, they justified that they could afford to issue those bonds because of a pledge under that 50% a certain percentage of those revenues to cover debt service. It is important to realize that when we talk about pledge, as a bond lawyer, you pledge a certain stream of revenue to the bondholders and they have a right to that stream of revenue; that is not the case here. The only thing they have pledged to the bondholder is your full faith and credit and it is up to you to figure out where to come up with that money. The Department of Administration is depending on having that percentage of coal tax revenue to meet debt service. **CHAIRMAN MCCANN** questioned if those revenues would have gone in to the general fund and basically we are using general fund dollars to service the debt service; but those general fund dollars would have been used in some other manner other than servicing debt service. **D. J. Whitaker** stated that money actually goes to capital projects, now, and then they transfer the portion the previous legislature sent the coal severance tax funding source would be used for, then that would be transferred to the general fund to the debt service fund to make payments. **Jane Hamman** clarified what the legislature redirected the funding to in the 1995 session.

**Maenan Ellingsen** provided historical background on past bonding. Discussion followed. **REP. KASTEN** questioned the buildings, old and new, and the upkeep and is there a limit to what can be handled. **Tom O'Connell** responded.

***{Tape : 2; Side : B; Approx. Time Counter : 275}***

**Jim Whaley, A&E**, discussed Volume 2 of the Governor's Book **EXHIBIT 1)**. He explained the various tables and how they are divided between cash and bonding projects. The table on Page 3 shows projects listed by agency with a summary of all the projects appropriated to each agency by funding source. The program is slightly larger than \$3 million because it includes the \$3 million contingent upon the cigarette tax which is not supported by Governor Martz.

***{Tape : 2; Side : B; Approx. Time Counter : 312}***

Page 4 breaks down the listing of all projects in the cash program in priority order. Discussion followed.

***{Tape : 2; Side : B; Approx. Time Counter : 367}***

Page 7 is the expanded cash program and were contingent upon the cigarette tax additional funds; project No. 65 thru No. 71. They are not funded at this point.

***{Tape : 2; Side : B; Approx. Time Counter : 384}***

Page 8 is a listing, in priority order, the bonded projects; No. 54 thru No. 64. These are the projects listed in HB 14. The cash portions for Military Affairs are listed in HB 5.

***{Tape : 2; Side : B; Approx. Time Counter : 407-517}***

Pages 9-15 are the cash projects listed by the agency. Pages 16-17 are the bonded projects listed by agency. Pages 18-187 are the detailed cash project request forms in priority order; he discussed how the pages are broken down by category.

***{Tape : 3; Side : A; Approx. Time Counter : 0-180}***

**Jim Whaley** continued his explanation of Volume 2. He responded to questions from the committee; referred to different projects and how to read the project sheet.

***{Tape : 3; Side : A; Approx. Time Counter : 181}***

Page 236 is a summary. Page 237 is a list prioritized requests by agency. He explained some of the projects and how they determine which ones are to be recommended. Discussion continued. Page 266 is a section with various campus maps for reference.

**Tom O'Connell** explained that Volume 2 (**EXHIBIT 1**) is the roadmap for projects that each agency follows as they ask for new projects. **Kathy Willis** will talk about the Project Status Report book (**EXHIBIT 2**) which is a roadmap for the projects that the legislature has approved in past bienniums; it indicates what they have done with a project.

*{Tape : 3; Side : A; Approx. Time Counter : 370-516}*

**Kathy Willis, Accountant for A&E**, reviewed the binder "Project Status Report" (**EXHIBIT 2**). This binder covers projects that were appropriated through the Long Range Building Program and on the books at the fiscal year end 2000. It contains an overview of the report as well as provide some general information that relates to the building program. It indicates the status reports on projects that are in the bonded and cash programs and will provide summary totals for the entire program. It is divided in to six sections: A) General Information; B) Status Reports for Bonded Projects; C) Status Reports for Cash Projects; D) Summary Totals - Bonded Projects; E) Summary Totals - Cash Projects; and F) Summary Totals - Bonded and Cash Projects.

**Ms. Willis** continued to explain each section and answered questions from the committee.

*{Tape : 3; Side : B; Approx. Time Counter : 0-150}*

#### **MS. WILLIS CONTINUED HER PRESENTATION**

She continued explaining each section and the information provided in each section. The committee requested for more information to be made available. She will return next week with this information.

*{Tape : 3; Side : B; Approx. Time Counter : 194}*

**Mike Wingard, Legislative Audit Division**, discussed two performance audits conducted in the past year mandated by the 1999 legislature; the second to gain some perspective from the first audit. He provided: 1) University Facilities Management-Performance Audit Summary sheet **EXHIBIT(jlh27a07)**; the booklet entitled Performance Audit - University Facilities Management (Physical Plants) **EXHIBIT(jlh27a08)**; Agency Facilities



Management-Performance Audit Summary sheet **EXHIBIT(jlh27a09)** and the booklet entitled the Limited Scope Performance Audit - Facilities Management of State-Owned Buildings **EXHIBIT(jlh27a10)**. He also did a short presentation for the committee. He introduced **Chris Wilkinson and Kent Rice, senior auditors.**

**{Tape : 3; Side : B; Approx. Time Counter : 207}**

**Chris Wilkinson, senior auditor,** provided a short presentation on their findings on the University Facilities. Their audit objectives were: 1) what are the levels and types of efforts given to maintenance and deferred maintenance; 2) have operating and maintenance budgets been adversely impacted by re-allocations and construction of new buildings; 3) and what role does the Long Range Building Program play in deferred maintenance liabilities and how are these funds used. She discussed the history of the performance audit and the use of a standard facility condition inventory (FCI). Their findings for the University system is found in **EXHIBITS 7 & 8**. Some of their conclusions are: 1) that deferred maintenance backlog data is not used for budget or Long Range Building requests; 2) that facilities management resources do not tie to backlog identification or to reduction strategies; 3) that the units are not ... how they record their financial information and 4) that the University facilities management operations make a dedicated effort to present the grounds and facilities of the University in the best light and that these organizations are innovative and flexible regarding facilities responsibilities. She discussed other findings and recommendations.

**{Tape : 3; Side : B; Approx. Time Counter : 341-440}**

**Kent Rice, senior auditor,** provided a short presentation on their findings on the Agency Facilities-State owned buildings; these can be found in **EXHIBITS 9 & 10**. This report was initiated as a result from the University Facilities Management audit. He defined their objectives and findings. They discovered that there was no consistency between agencies or facilities in maintenance activities. They recommend that a policy be developed for consistency in maintenance of their facilities; that the legislature mandate a standardized statewide facilities condition assessment process for all state agencies and that the Department of Administration develop and conduct the FCI process. Their review found that agencies are facing similar issues as those of the University System in regards to deferred maintenance liabilities.

**{Tape : 3; Side : B; Approx. Time Counter : 442 - 515}**

**Mike Wingard**, closed their testimony stating the two important subjects discovered as the result of these findings is 1) there is a huge deferred maintenance liability that is not going away and is growing and 2) that the University System has made some efforts to address the deferred maintenance liabilities by doing the FCI and making requests through the Long Range Building Program to address those liabilities. They also discovered that the State Agencies are further behind the University System in terms of comprehensive management systems in place relative to identifying deferred maintenance and developing maintenance programs for subsequent or individual buildings.

**SEN. TESTER** questioned what agencies were chosen for the deferred maintenance audit and did they attempt to estimate the deferred maintenance for all the agencies combined. **Mike Wingard** referred the committee to the list on page 16 of the Facilities Management of State-Owned Buildings and that they did not have figures for all agencies combined.

*{Tape : 4; Side : A; Approx. Time Counter : 0-252}*

**REP. VICK** questioned if there were any standards of what is acceptable deferred maintenance, comparison to other states. **Mr. Wingard** responded. They referenced Pages 45-47 in the booklet entitled "Performance Audit University Facilities Management (Physical Plants). (**SEE EXHIBIT 8**) Discussion followed, questions were answered.

The meeting was adjourned.

**ADJOURNMENT**

Adjournment: 12:00 P.M.

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REP. MATT MCCANN, Chairman

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ANDREA HYATT, Secretary

MM/AH

**EXHIBIT** (j1h27aad)